

**Bureau of Land Management
Winnemucca District Office
Categorical Exclusion**

[☒] HRFO (1000) [☐] BRFO (3000) [☐] District ()

CX#: DOI-BLM-NV-W010-2012-0029 -CX	Date: 3/23/2012
Regulatory Authority (CFR or Law): 43 CFR 7.1 ARPA & NHPA BLM Manual: 8100 Subject Function Code: 8140	Lease / Case File / Serial #:
Project Lead Preliminary Review: Patrick Haynal Is the project located within the Preliminary Priority Habitat? No Is the project located within the Preliminary General Habitat? No	

1. BLM District Office: Winnemucca District Office
2. Name of Project Lead: Patrick Haynal
3. Project Title: Horse Canyon Creek Riparian Area Fence
4. Applicant: BLM Winnemucca District
5. Project Description: (briefly describe who, what, when, where, why, how)

The BLM Winnemucca District (WD) proposes to construct approximately 1700' of 4-strand fence around a riparian zone along Horse Canyon Creek (see attached project maps) in order to protect sensitive resources from extensive cattle trampling and other impacts. The flow of the creek would not be impeded by fence construction.

A 14' drop-down cattle guard would be installed across Horse Canyon Creek Road to keep it open where the fence would cross that road. A gate, if necessary, would be constructed where the proposed fence will tie into an existing range fence. It is anticipated that fence construction would be completed during the summer of 2012. The fence boundary was determined by GPS in February of 2012.

A portion of the sensitive resources extends onto Forest Service property. That portion of the site would not be scheduled for any treatment at this time. However, Humboldt-Toiyabe National Forest would be coordinated with.

Project dimensions (length, width, height, depth): 1700'in length Acreage: enclosing 18 acres

Will the project result in new surface disturbance? Yes X No

Has the project area been previously disturbed? Yes No X N/A . If yes, what percent of the project area has been disturbed? % . If only part of the project area has been disturbed, indicate disturbed area on map. Describe disturbance (and attach photo of disturbed area if you have one):

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6. Legal Description: T 42N R 38E SE1/4 of the SE1/4 of section 18

USGS 24k Quad name: Santa Rosa Peak

100k map name: Quinn River Valley

Land Status: BLM X Private _____ Other _____

7. Create PDFs of 1:24000 Project Location Map and 1:100,000 general vicinity map. (See attached maps)

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Part I: Plan Conformance Review

The proposed Action is subject to the:

- ☒ Paradise-Denio Management Framework Plan
- ☐ Sonoma-Gerlach Management Framework Plan
- ☐ Black Rock Desert-High Rock Canyon Emigrant Trails NCA and Associated Wilderness and Other Contiguous Lands in Nevada RMP

(The Proposed Action has been reviewed for conformance with this plan (43 CFR 1610.5, BLM Manual 1617.3)).

Part II: NEPA Review

Categorical Exclusion Review: This Proposed Action qualifies as a categorical exclusion under:

☐ 43 CFR 46.210 DOI Implementation of NEPA of 1969, Listing of Departmental Categorical Exclusions *(formerly 516 DM2 Appendix 1)*

☒ 516 DM11.9, (BLM) CX J-9: Construction of small protective enclosures, including those to protect reservoirs and springs and those to protect small study areas.

ESA and BLM Sensitive Status Species

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ESA and BLM Sensitive Status Species

Evaluation Criteria	Yes	No
1. Are species listed under the Endangered Species Act likely to occur in the project area? If yes, list the species in Table 1 below. Verify with USFWS or use approved list.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2. Are BLM NV Sensitive Species, based upon the current IM, likely to occur in the project area? If yes, list the species in the Table 1 below.

☒☐

3. Could the proposed action result in “take” under the Migratory Bird Treaty Act? If yes, attach appropriate mitigation measures.

☒☐**Table 1. Special Status Species that may occur in the project area:**

ESA	BLM	Common (<i>Scientific</i>) Name	May Be Affected?	Mitigation for BLM Sensitive Species (Attach ESA Section 7 Compliance to Form)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Greater sage-grouse	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Flag fence with reflectors to decrease bird strikes during winter months.
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	

Table 2 Migratory Bird Treaty Act Consideration

Potential MBTA Species w/in the Project Area Common (<i>Scientific</i>) Name	May Be Affected?	Proposed Mitigation
black-throated sparrow (<i>Amphispiza bilineata</i>), Brewer’s blackbird (<i>Euphagus cyanocephalus</i>), Brewer’s sparrow (<i>Spizella breweri</i>), canyon wren (<i>Catherpes mexicanus</i>), gray flycatcher (<i>Empidonax wrightii</i>), green-tailed towhee (<i>Pipilo chlorurus</i>), rock wren (<i>Salpinctes obsoletus</i>), sage sparrow (<i>Amphispiza belli</i>),	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	In order to avoid potential impacts to breeding migratory birds, a nest survey shall be conducted by a qualified biologist within potential breeding habitat prior to any surface disturbance proposed during the avian breeding season (March 1st through August 31st). Surveys must be conducted no more than 10 days and no less than 3 days prior to initiation of disturbance.

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sage thrasher (<i>Oreoscoptes montanus</i>), western meadowlark (<i>Sturnella neglecta</i>), and vesper sparrow (<i>Pooecetes gramineus</i>)		
	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	

The Proposed Action has been reviewed to determine if any exceptions described in 43 CFR 46.215 Categorical Exclusions: Extraordinary Circumstances apply. (See attached page)

Mitigation Measures/Remarks: In order to avoid potential impacts to breeding migratory birds, a nest survey shall be conducted by a qualified biologist within potential breeding habitat prior to any surface disturbance proposed during the avian breeding season (March 1st through August 31st). Surveys must be conducted no more than 10 days and no less than 3 days prior to initiation of disturbance.

Part III: DECISION: I have reviewed this plan conformance and NEPA compliance record and have determined that the proposed project is in conformance with the approved land use plan and that no other environmental analysis is required.

Based on 43 CFR 7.1, it is my decision to allow for implementation of the project, as described, with the mitigation measures identified above. This is a combined NEPA and program implementation decision.

Remarks reserved for authorized officer:

Authorized Official \\s\Amanda DeForest, Acting HRFO FM Date: 7/10/2012 _____
 (Signature)

Administrative Review or Appeal Opportunities

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Administrative Review or Appeal Opportunities

A person who wishes to appeal to the Interior Board of Land Appeals must do so under 43 CFR 4.411 and must file in the office of the officer who made the decision (not the board), in writing to Mike Truden, Humboldt River Field Office Manager, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. A person served with the decision being appealed must transmit the notice of appeal in time to be filed in the office where it is required to be filed within thirty (30) days after the date of service.

The notice of appeal must give the serial number or other identification of the case and may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make. Form 1842-1 provides additional information regarding filing an appeal.

No extension of time will be granted for filing a notice of appeal. If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the appeal is filed during the grace period provided in §4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

The appellant shall serve a copy of the notice of appeal and any statements of reason, written arguments, or briefs under §4.413 on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor, Pacific Southwest Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890. Service must be accompanied by personally serving a copy to the party or by sending the document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).